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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,244	11/25/2003	Naohiro Takeshita	10517/192	4342
23838 7590 05/01/2009 KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005				
EXAMINER WALKER, KEITH D				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
05/01/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/720,244

Applicant(s)

TAKESHITA ET AL.

Examiner

KEITH WALKER

Art Unit

1795

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,7,10,12,13 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,7,10,12,13 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 10/20/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Claims 1, 2, 7, 10, 12, 13 and 22 are pending examination as discussed below.

Information Disclosure Statement

The information disclosure statement filed on 10/20/08 has been placed in the application file and the information referred to therein has been considered as to the merits.

Claim Objections

Applicant is advised that should claim 1 be found allowable, claim 22 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 2 recites the limitation "the same characteristics" in line 2. There is insufficient antecedent basis for this limitation in the claim.

2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The entire claim limitation is grammatically awkward and unclear and so is indefinite. The parent claim 1 already claims a fuel cell stack comprising a plurality of cell blocks, so it is unclear what the plurality of cells relates. Furthermore, no "characteristic" is defined in the claim language so it is unclear what the term "the same characteristic" is referring. The claim is ambiguous and therefore indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 7 & 22 are rejected under 35 U.S.C. 102(b) as being anticipated by JP Publication 63-119166 (Sakai).

Sakai teaches a fuel cell stack with a supply port and discharge port provided at the same end of the stack (Figs. 3 & 4). The separator plates have a plurality of grooves with a plurality of ribs between (Abstract). The pressure loss of a first cell is smaller than that of a second cell and as the plates have different configurations, the water draining characteristics are different. The cell with the smaller pressure loss is disposed in a vicinity of a second end portion of the cell stack (Abstract).

Regarding claim 7, this limitation is drawn to a method of operating or intended use of the fuel cell and while intended use recitations and other types of functional language are not entirely disregarded, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function (MPEP § 2114). The manner of operating the device does not differentiate an apparatus claim from the prior art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 7, 10, 12, 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-357869 (Hamada) in view of JP Publication 63-119166 (Sakai).

The teachings of Sakai as discussed above are incorporated herein.

Hamada teaches a solid high polymer type fuel cell stack in which performance of unit cells at the two ends of the stack are prevented from dropping. The fuel cell stack is structured such that a plurality of unit cells are laid one over another according

to one of the following: 1) the water repellency of the cathode gas diffusion layer of each unit cell located at the stack ends is made lower than that of the unit cells located elsewhere in the stack; 2) the gas permeability of the cathode gas diffusion layer of each unit cell located at the ends is made higher than that of the unit cells located elsewhere in the stack; 3) the specific surface area of the carbon material of the mixture layer in the cathode of each unit cell located at the ends is made greater than that of the unit cells located elsewhere in the stack; and, 4) the pressure loss in the cathode side gas passage of each unit cell located at the ends is made smaller than that of the unit cells located elsewhere in the stack (abstract). The depth of a separator of a cell unit located at an end of the stack is increased by 10% compared with a gas passageway of a single cell located in other parts of the stack (0031). Reactant gas is supplied from the clamping plates located at both ends of the stack (0013).

Regarding claim 7, this limitation is drawn to a method of operating or intended use of the fuel cell and while intended use recitations and other types of functional language are not entirely disregarded, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function (MPEP § 2114). The manner of operating the device does not differentiate an apparatus claim from the prior art.

Hamada is silent to the discharge port being located on the same side as the supply port. However, it is well known in the art to locate the inlet and the outlet ports on the same side of the fuel cell. Locating the ports on the same side is a design consideration and would allow a fuel cell to fit into spaces while allowing all the components to be accessible on one side. Combining prior art elements according to known methods to yield predictable results and using known techniques to improve similar devices in the same way are considered obvious to one of ordinary skill in the art (KSR, MPEP 2141 (III)).

Hamada is silent to the cross-sectional area of a gas paths formed between the ribs being larger in the first cell block than the second cell block.

Sakai teaches a gas path for a separator plate having plurality of ribs between grooves where the pitch between the ribs is larger for a first plate than a second plate (Abstract). This configuration improves reliability and performance of the fuel cell by increasing the cross-sectional area of the fuel gas passages.

Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the separator path of Hamada with the different pitched paths of Sakai to improve the fuel cell operation by increasing the cross-sectional area of the fuel gas passages.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection based on the amendments.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KEITH WALKER** whose telephone number is (571)272-3458. The examiner can normally be reached on Mon. - Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1795

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

K. Walker

/PATRICK RYAN/
Supervisory Patent Examiner, Art Unit 1795